

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2452 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

STATE OF GUJARAT

Versus

FATEHSINH CHHATRASINH RANA

Appearance:

1. Special Civil Application No. 2452 of 2002
MS SHRADHDHA TRIVEDI, AGP for Petitioner No. 1
MR EE SAIYED for Respondent No. 1

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 31/07/2002

ORAL JUDGEMENT

1. The State of Gujarat through Deputy Conservator
of Forest has approached this Court to challenge the
award passed by the Labour Court, Bharuch in Reference

(L.C.B.) No.363/1990 (old) Reference (L.C.B.) No.694/1989 dated 30th July, 1999.

2. It is the case of the petitioner that the respondent at the relevant time was working as a Protection Labourer on daily wage basis. After serving for some years, he on his own stopped coming for work. It is the case of the petitioner that there was no termination of service by the petitioner, but the respondent had left the job with the intention of getting more remuneration and for that very reason he had joined the service in G.I.D.C. estate Ankleshwar. The case of the respondent is that he was a permanent employee of the petitioner and his service was wrongly terminated without any justifying reason by the petitioner. His case further is that before terminating the service, the petitioner had not followed the provisions of Industrial Disputes Act and, therefore, the termination of service was bad in law. Since the petitioner did not take him back in service, the respondent raised dispute which ultimately came to be referred to the Labour Court under the provisions of Section 10 (1) (c) of the Industrial Disputes Act.

2.1. Before the Labour Court, both the parties adduced evidence. The stand of the petitioner was that the respondent was a watch man and as and when the petitioner received grant the services of the respondent were availed of. According to the petitioner he was not a regular employee of the petitioner. It is further averred by the petitioner that as and when need was there to guard the forest, the respondent was employed in the service of the watch man. With a view to earn more remuneration, he joined service at G.I.D.C. estate, Ankleshwar. The respondent more or less narrated the same story. At the conclusion of the proceedings the Labour Court held that the respondent was a permanent employee of the petitioner and that his service was wrongly terminated by the petitioner without following due procedure as envisaged under the provisions of Industrial Disputes Act. The Labour Court therefore, directed the petitioner to reinstate the respondent with continuity of service on his original post together with 20% backwages.

2.2. Having been aggrieved by the award passed by the Labour Court the petitioner has approached this Court. Ms.Sradhdha Trivedi learned A.G.P. for the petitioner has contended before me that the respondent was not a permanent employee of the petitioner. She has further contended that it was the respondent who had left the

employment of the petitioner on his own and there was no termination of his service by the petitioner. She has further submitted that the Forest Department of the State Government cannot be said to be an 'Industry' within the meaning of the Industrial Disputes Act and, therefore, the present reference itself is not maintainable. In support of the last contention she has relied on the decision of the Apex Court in the case of Himanshu Kumar Vidyarthi v. State of Bihar reported in A.I.R. S.C. 3657. Mr.E.E. Saiyed learned counsel for the respondent has supported the award passed by the Labour Court and has submitted that the present petition deserves to be dismissed.

3. So far as the first two contentions are concerned, they are more or less based on facts. From the record of the petition it appears that the respondent at the relevant time was working as a watch man in the forest of the petitioner. It also appears from the record that he had been rendering service for over two years and he had worked for 240 days continuously in a single year. In that view of the matter, the respondent cannot be said to be a daily wager who was employed intermittently as and when such need arise. Moreover, the petitioner has totally failed to establish that the respondent had left the service of the petitioner on his own with a view to earn more remuneration and had joined service at G.I.D.C estate, Ankleshwar. In absence of any such evidence there is no reason for the Labour Court or even for this Court to come to the conclusion that the respondent had abandoned the service of the petitioner voluntarily. On this count the submission of Ms.Trivedi cannot be accepted. So far as the third contention of Ms.Trivedi is concerned there cannot be any dispute about the ratio laid down by the Apex Court in the case cited by Ms. Trivedi. However, the factual position in the present case is slightly different. In the case cited by Ms.Trivedi, the concerned petitioners were working as clerks in the office of the Forest Department and in that case the Apex Court has held that the Forest Department of the Government cannot be said to be an 'Industry' and persons working as clerks in the said department cannot be brought under the purview of the definition of 'workman' under Section 2 (s) of the Industrial Disputes Act. Here, in this case, the respondent was working as a watch man at the actual site of the forest and he was also part and parcel of the force which was employed by the petitioner to carry out the forest activity. The forest activity cannot be compared with the Forest Department and, therefore, the case cited by Ms.Trivedi cannot be of any help to the petitioner.

In the aforesaid circumstances, this petition does not have any merit and it is required to be dismissed. The petition is, therefore, dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated.

31.7.2002. [AKSHAY H. MEHTA, J.]

/phalguni/